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Attorneys for Respondents AGRA-  
Technologies, Inc.; William Jay  
and Sandra Lee Pierson; William  
H. and Patricia M. Baker

Lonnie J. Williams, Jr. (#005966)  
Carrie M. Francis (#020453)

**BEFORE THE ARIZONA CORPORATION COMMISSION**

In the matter of:

AGRA-TECHNOLOGIES, INC. (a/k/a ATI),  
a Nevada corporation,  
5800 North Dodge Avenue, Bldg. A  
Flagstaff, AZ 86004-2963;

WILLIAM JAY PIERSON (a/k/a BILL  
PIERSON) and SANDRA LEE PIERSON  
(a/k/a SANDY PIERSON), husband and wife,  
6710 Lynx Lane  
Flagstaff, AZ 86004-1404;

RICHARD ALLEN CAMPBELL (a/k/a  
DICK CAMPBELL) and SONDR A JANE  
CAMPBELL, husband and wife,  
8686 West Morten Avenue  
Glendale, AZ 85304-3940;

WILLIAM H. BAKER, JR. (a/k/a BILL  
BAKER) and PATRICIA M. BAKER,  
husband and wife,  
3027 N. Alta Vista  
Flagstaff AZ 86004

JERRY J. HODGES and JANE DOE  
HODGES, husband and wife,  
1858 Gunlock Court  
St. George, UT 84790-6705;

LAWRENCE KEVIN PAILLE (a/k/a  
LARRY PAILLE) and JANE DOE PAILLE,  
husband and wife,  
220 Pinon Woods Drive  
Sedona, AZ 85351-6902;

Respondents.

**DOCKET NO. S-20484A-06-0669**

**OPPOSITION TO SECURITIES  
DIVISION'S MOTION FOR  
RULING ON ALLEGEDLY  
INADVERTENTLY PRODUCED  
PRIVILEGED DOCUMENTS BY  
RESPONDENTS AGRA-  
TECHNOLOGIES, INC.,  
WILLIAM H. BAKER, JR., AND  
WILLIAM J. PIERSON**

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

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Arizona Corporation Commission

**DOCKETED**

FEB 20 2007

DOCKETED BY

KIK

1 Respondents AGRA-TECHNOLOGIES, INC., WILLIAM J. PIERSON (a/k/a  
2 BILL PIERSON) and SANDRA L. PIERSON (a/k/a SANDY PIERSON), and WILLIAM  
3 H. BAKER, JR. (a/k/a BILL BAKER) and PATRICIA M. BAKER (hereinafter jointly  
4 referred to as "AGRA" or "Respondents") oppose the Securities Division's Motion for  
5 Ruling on Allegedly Inadvertently Produced Privileged Documents by Respondents. This  
6 opposition is supported by the attached Memorandum of Points and Authorities.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. THE DIVISION'S MOTION IS PREMATURE**

9 The immediate dispute concerns whether certain documents produced by AGRA  
10 (1) are privileged and (2) were provided to the Division inadvertently. As set forth in the  
11 Division's Motion, AGRA's counsel was provided copies of documents produced by  
12 Respondents Pierson and Baker on November 14, 2006. *See* Division Motion, Exhibit 20  
13 thereto. Within days of this production, on November 21, 2006, AGRA's counsel  
14 informed Division attorney, Mike Dailey, that certain documents (as listed) were  
15 privileged and produced inadvertently. *See* Division Motion, Exhibit 21 thereto. After  
16 further review, other privileged materials were found to have been mistakenly produced  
17 and the Division was so notified. *See* Division Motion, Exhibits 23 and 27 thereto.

18 Because the parties could not agree on the privileged nature of the documents and  
19 communications at issue, legal counsel for the Division and AGRA agreed to meet and  
20 discuss the issue in person. This meeting was initially scheduled for January 4, 2007, and  
21 was then reset at the Division's request to January 5. *See* E-Mail Communications  
22 between Mike Dailey and Carrie Francis, attached hereto as Exhibit A. AGRA's counsel,  
23 in a good faith effort to resolve the dispute, agreed to redact documents where the  
24 privilege log indicated redactions could be made and then provide those documents to the  
25 Division. As for documents that were prepared solely for AGRA's legal counsel and  
26 clearly privileged, those documents were asked to be returned in their entirety. Mr.  
27 Dailey stated he would consider the proposal after further review of the privilege log. It  
28 was also proposed by AGRA's counsel, that if Mr. Dailey found it necessary to review a



1 specific claimed privilege document for a better understanding of the privileged nature of  
2 the communication, the parties could discuss such a need and possibly permit a review to  
3 further the privilege analysis. Mr. Dailey has never responded, has never clarified what  
4 documents AGRA can resubmit in redacted form, and has never asked to examine one of  
5 the privilege documents he claims to have set aside without review. Instead, the Division  
6 filed this Motion before any agreement could be negotiated by the parties without  
7 intervention from the Judge.

8 Accordingly, the Division should be ordered to provide a list of documents from  
9 AGRA's privilege log that can be redacted and resubmitted. After this process is  
10 completed, for those documents where a dispute still remains as to the privileged nature of  
11 the communications, a succinct resolution by the Judge can be made. It is premature at  
12 this juncture, and a waste of the Judge's time, to expect a blanket decision about the  
13 privilege nature of documents or communications before the parties limit the dispute in  
14 this manner. Furthermore, this is how the parties agreed to proceed.

## 15 **II. THE DIVISION'S VARIOUS SUBPOENA EFFORTS**

16 Between June and October 2006, the Division has requested documents from  
17 Respondents no less than nine times. *See* Affidavit of William H. Baker, attached hereto  
18 as Exhibit B, at ¶¶ 4, 8, 15-17, and 20; Affidavit of William J. Pierson, attached hereto as  
19 Exhibit C, at ¶ 4; Division Motion, at 3:8-9. Usually the Division allowed Respondents a  
20 three-week response time and would permit no extensions. *Id.* Concerning the largest  
21 production requested from Respondents -- where over 4,000 documents were disclosed --  
22 the Division only allowed Respondents two weeks to respond. *See* Exhibit C, at ¶¶ 8, 11.

23 In answering these various requests, Respondents have produced in excess of 7,850  
24 pages of documents. *See* Exhibit B, at ¶¶ 6, 11, 17, 19, 21, and 22; Exhibit C, at ¶ 5. Of  
25 these documents, it has been determined that 145 privileged communications or  
26 documents were inadvertently disclosed. *See* Exhibit B, at ¶¶ 19 and 21; Exhibit C, at ¶ 7.  
27 Most of the privileged communications can be redacted from the documents at issue,  
28 while some need to be returned in their entirety.

### 1     **III.   THE DOCUMENTS AT ISSUE ARE PRIVILEGED**

2           The Division has claimed on numerous occasions that "no one" in their office "will  
3 review the documents identified" as privileged by AGRA "until the issue is resolved."  
4 *See i.e.*, Division Motion, Exhibit 22 thereto, at ¶ 2. Remarkably, the Division now  
5 contends that the documents at issue are not privileged "as to this matter." *See* Division  
6 Motion, at 7:7-8:4. This contention is absurd, considering that the Division claims to  
7 never have even reviewed any of AGRA's identified privileged documents.

8           Nonetheless, a brief review of the privilege log created by Respondents clearly sets  
9 forth that the communications are privileged. As one example, the document Bates  
10 labeled ACC012078-12081 is an e-mail communication from William Baker to Lonnie  
11 Williams, Esq. regarding the Campbells' civil lawsuit against AGRA. *See* Privilege Log,  
12 Exhibit 1 to William Baker's Affidavit, Exhibit B hereto, at pg. 2, row 5. This is a  
13 communication between client and attorney, seeking legal advice. It does not matter that  
14 the communication concerns the Campbell civil litigation; this is an attorney-client  
15 protected communication that was inadvertently produced, which should be returned to  
16 Respondents. The Division cites to no authority that privileges can only be maintained in  
17 actions where the advice or work product relates directly to the underlying matter, because  
18 this is not a proper construction of the law of privileges.

19           The attorney-client privilege, the "oldest of the privileges for confidential  
20 communications known to the common law," has been rigorously guarded "to encourage  
21 full and frank communications between attorneys and their clients and thereby promote  
22 broader public interests in the observance of law and administration of justice." State v.  
23 Towery, 186 Ariz. 168, 920 P.2d 290 (1996) (*quoting Upjohn Co. v. United States*, 449  
24 U.S. 383, 389 (1981)); Admiral Ins. Co. v. U.S. District Court, 881 F.2d 1486, 1492-93  
25 (9<sup>th</sup> Cir. 1989) (attorney-client privilege is absolute).

26           Moreover, some of the documents at issue contain the work product of AGRA's  
27 counsel. Again as one example, the document Bates labeled ATI012845, contains  
28 strategy notes from Quarles & Brady LLP paralegal Sandra Smith. *See* Privilege Log,

1 Exhibit 1 to William Baker's Affidavit, Exhibit B hereto, at pg. 7, row 5. These  
2 documents are work-product privilege protected. ARIZ. R. CIV. PROC. 26(b)(3) (an  
3 attorney's mental processes are almost never discoverable).

4 Again, the Division should be ordered to provide a list of documents that can be  
5 redacted and resubmitted by AGRA. After this process is completed, for those documents  
6 where a dispute still remains as to the privileged nature of the communications, a succinct  
7 resolution by the Judge can be made, whereby the Judge can review each communication  
8 at issue to determine whether the document contains protected information.

#### 9 **IV. INADVERTENT DISCLOSURE DOES NOT WAIVE PRIVILEGES**

10 Many courts (excluding Arizona) have addressed the issue of continuing privileges  
11 in situations involving the inadvertent disclosure of privileged documents. There is  
12 neither a consistent substantive rule, nor a consistent procedural mechanism for resolving  
13 these issues. In general, the courts have taken three approaches. A minority of  
14 jurisdictions take the position that any privilege is waived once the information has been  
15 disclosed, regardless of whether the disclosure was intentional or inadvertent. Some other  
16 jurisdictions take the opposite position, holding that no waiver occurs unless the party  
17 intended to disclose the privileged material. The third position, adopted by a majority of  
18 courts, is to consider all the circumstances of the disclosure to determine, on a case-by-  
19 case basis, whether the inadvertent disclosure has waived any privilege. In making this  
20 determination, these courts generally apply a multi-factor analysis that considers (1) the  
21 reasonableness of the precautions taken to prevent inadvertent disclosure, (2) the amount  
22 of time taken to remedy the error, (3) the scope of discovery, (4) the extent of the  
23 disclosure, and (5) whether the interests of justice would be served by relieving the party  
24 of its error.

25 ...

26 ...

27 ...

28 ...

1 The clear majority position (including most federal courts) is to consider all  
2 relevant circumstances to determine whether a waiver of the privilege occurred.<sup>1</sup> See e.g.,  
3 Allread v. City of Grenada, 988 F.2d 1425, 1433-34 (5th Cir. 1993); Hydraflow, Inc. v.  
4 Enidine Inc., 145 F.R.D. 626, 637 (W.D.N.Y. 1993); Edwards v. Whitaker, 868 F. Supp.  
5 226, 229 (M.D. Tenn. 1994); Scott v. Glickman, 199 F.R.D. 174 (E.D.N.C. 2001); John  
6 Blair Communications, Inc. v. Reliance Capital Group, L.P., 182 App. Div. 578 (N.Y. Ct.  
7 App. 1992); Dalen v. Ozite Corp., 594 N.E.2d 1365, 1371-72 (Ill. Ct. App. 1992); Franzel  
8 v. Kerr Mfg. Co., 600 N.W.2d 66 (Mich. App. 1999); State Compensation Ins. Fund v.  
9 WPS, Inc., 82 Cal. Rptr. 2d 799, 70 Cal. App.4<sup>th</sup> 644 (Cal. App. 1999) (receiving  
10 attorneys should have returned and not used privileged documents produced with 7,000  
11 pages of discovery); Abamar Housing & Dev., Inc. v. Lisa Daly Lady Decor, Inc., 698  
12 So.2d 276 (Fla. App. 1997); GPL Treatment, Ltd. v. Louisiana-Pacific Corp., 894 P.2d  
13 470 (Or. App. 1995).

14 A pronouncement of this principle occurred in JWP Zack, Inc. v. Hoosier Energy  
15 Rural Elec. Coop., 709 N.E.2d 336 (Ind. App. 1999). The Zack court discussed three  
16 approaches to the problem utilized in the federal court system: the objective approach, the  
17 subjective approach, and the balancing approach. Under the objective approach, an  
18 inadvertent disclosure would always waive the privilege without regard to circumstances.  
19 *Id.*, at 341. The subjective approach requires continued recognition of the privilege unless  
20 the disclosure was intentional. *Id.* Finding that the objective test was too strict and unfair,  
21 the Zack court, joining the majority, opted for the balancing test. *Id.*

22 Under the balancing test, the court considers all relevant circumstances in  
23 determining whether the protection of the privilege is forfeited because of an accidental  
24 disclosure. *Id.* Although not rigid, the criteria include the following:

25 \_\_\_\_\_  
26 <sup>1</sup> The Division cites to several cases suggesting that AGRA's productions to the  
27 ACC were voluntary and done to gain favorable treatment, somehow thereby waiving  
28 AGRA's claimed privileges. See Division Motion, at 11:22-13:8. This is simply  
incorrect. AGRA was subpoenaed by the Division and threatened with contempt  
proceedings if it did not fully comply. See Exhibit B, at ¶¶ 4, 8, and 16-17; Exhibit C, at ¶  
4.

- 1 (1) the reasonableness of the precautions taken to prevent inadvertent
- 2 disclosure;
- 3 (2) the time taken to rectify the error;
- 4 (3) the scope of discovery;
- 5 (4) the extent of disclosure; and
- 6 (5) the care or negligence with which the privilege is guarded.

7 *Id.*, at 342. Above all, however, is an “overreaching issue” of fairness. *Id.* Applying  
8 these factors, the court found that the producing party did not waive the attorney-client  
9 privilege when it inadvertently left privileged documents in two boxes of documents  
10 provided to opposing counsel.

11 Most state courts that do not apply the balancing test use the subjective test. That  
12 is, unless the disclosing party intended to waive the privilege, it remains. Those courts  
13 follow the rule set forth in Mendenhall v. Barber-Greene Co., 531 F. Supp. 951 (N.D. Ill.  
14 1992), which held:

15 A truly inadvertent disclosure cannot and does not constitute a  
16 waiver of the attorney-client privilege. The issue for counsel and  
17 the court upon a claim of inadvertent disclosure must be whether  
18 the disclosure was actually inadvertent, that is, whether there was  
19 intent and authority for the disclosure ... If receiving counsel  
20 understands the disclosure to have been inadvertent, no waiver will  
21 have occurred. Unless receiving counsel has a reasonable belief  
22 that the disclosure was authorized by the client and intended by the  
23 attorney, the receiving attorney should return the document and  
24 make no further use of it.

25 531 F. Supp. at 954-55; *see also*, Harold Sampson Children’s Trust v. Linda Gale  
26 Sampson 1979 Trust, 679 N.W.2d 794, 796 (Wis. 2004); Corey v. Norman, Hanson &  
27 Detroy, 742 A.2d 933, 940-42 (Me. 1999); Redland Soccer Club, Inc. v. Department of  
28 Army, 55 F.3d 827 (3d Cir. 1995); Trilogy Communications, Inc. v. Excom Realty, Inc.,  
652 A.2d 1273 (N.J. Super. 1994) (court refused to allow into evidence privileged  
document unintentionally disclosed by counsel); Pitard v. Stillwater Transfer & Storage  
Co., 589 So.2d 1127 (La. App. 1991) (admission of the inadvertently disclosed letter into

1 evidence was consequential error); Sterling v. Keidan, 412 N.W.2d 255, 257-58 (Mich.  
2 Ct. App. 1987). At least one state, Texas, has adopted this “no waiver” approach by  
3 placing it directly into the state's general discovery rules. *See* Tex. R. Civ. P. 193.3(d)  
4 (production of material without intending to waive a claim of privilege does not waive the  
5 claim if the party amends its discovery responses to assert the privilege within ten days of  
6 discovering the production was made).

## 7 **V. AGRA DID NOT WAIVE ITS PRIVILEGES**

8 Under either the balancing or subjective test, the inadvertent production by AGRA  
9 of some privileged documents does not waive the attorney-client or attorney work-product  
10 privileges. AGRA considered the documents to be confidential and did not intend to  
11 disclose them to any third party, including the Division. *See* Exhibit B, at ¶¶ 6, 11, 19, 21,  
12 and 22; Exhibit C, at ¶ 5. Due to a few errors in reviewing the numerous documents  
13 disclosed to the Division, a minimal amount of privileged documents were mistakenly  
14 provided to the Division. *See* Exhibit B, at ¶¶ 19 and 21; Exhibit C, at ¶ 7. The inclusion  
15 of these privileged materials was not the result of a knowing decision by AGRA to waive  
16 the privileged nature of the document and to share with outside parties AGRA’s  
17 communications with its legal counsel or their work-product. *See* Exhibit B, at ¶¶ 6, 11,  
18 19, 21, and 22; Exhibit C, at ¶ 5. Upon learning of the error, AGRA immediately objected  
19 to the use of its protected materials and requested return of the original privilege  
20 documents and all copies. *See* Division Motion, Exhibits 20-21, 23 and 27 thereto.  
21 AGRA’s privileges survive these inadvertent disclosures.

## 22 **VI. THE DIVISION MUST RETURN AGRA'S PRIVILEGE DOCUMENTS**

23 The American Bar Association (“ABA”) Ethics Committee has set forth in ABA  
24 Ethics Opinion 92-368 that once an opposing party becomes aware that a document may  
25 be subject to the attorney-client privilege, it has an obligation to:

- 26 (1) refrain from examining the document;
- 27 (2) notify the sending lawyer; and

1           (3) follow the sending lawyer's instructions.

2       *See* ABA Ethics Opinion 92-368, entitled "Inadvertent Disclosure of Confidential  
3       Materials."

4           Courts have repeatedly acknowledged the sound policy behind Opinion 92-368:

5                   [W]e remind counsel of the well-justified dictate that "[a]n  
6                   attorney who received confidential documents of an adversary as a  
7                   result of an inadvertent release is ethically obligated to promptly  
8                   notify the sender of the attorney's receipt of the documents.

9       Abamar Housing & Dev., Inc. v. Lisa Daly Lady Decor, Inc., 698 So.2d 276, 279 (Fla.  
10       App. 1997); *see also* Corey, 742 A.2d at 941 ("unless receiving counsel has a reasonable  
11       belief that the disclosure was authorized by the client and intended by the attorney, the  
12       receiving attorney should return the document and make no further use of it"); State  
13       Compensation Ins. Fund v. WPS, Inc., 82 Cal. Rptr. 2d at 800 (when a lawyer ascertains  
14       that he or she may have privileged attorney-client matter that was inadvertently provided  
15       by another, that lawyer must notify the party entitled to the privilege).

16           In the circumstances of this case, the Division should not have used the  
17       inadvertently disclosed communications. Counsel was ethically bound to refrain from  
18       viewing its contents, to notify counsel for AGRA, and to return the documents. *See also*  
19       Arizona Ethical Rule 4.4(b), and Comment 2 thereto. Upon learning of the inadvertent  
20       disclosure, AGRA made repeated requests for the return of the communications, but these  
21       requests were improperly denied. *See* Division Motion, Exhibits 20-21, 23 and 27 thereto.

## 22       **VI. CONCLUSION**

23           Because the inadvertent disclosure of the communications does not constitute a  
24       waiver of the right to assert attorney-client and/or attorney work-product privileges or  
25       immunities, AGRA respectfully requests that the Division return the privileged  
26       communications to AGRA and refrain from using or mentioning the content of the  
27       privileged communications to any third party. As an alternative thereto, AGRA requests  
28       that the Division be ordered to provide a list of documents capable of being redacted to  
      further limit the issues before the Judge. After that process is completed a review by the

1 Judge of specific communications still in dispute can be made and a determination as to  
2 the protections to be afforded those documents.

3 RESPECTFULLY SUBMITTED this 20th day of February, 2007.

4 QUARLES & BRADY LLP

5 By



6 Lonnie J. Williams, Jr.

7 Carrie M. Francis

8 Attorneys for AGRA-Technologies, Inc.;

9 William Jay and Sandra Lee Pierson;

10 William H. and Patricia M. Baker

11 ORIGINAL and thirteen copies of the fore-  
12 going filed this 20th day of February, 2007, to:

13 Docket Control  
14 Arizona Corporation Commission  
15 1200 West Washington  
16 Phoenix, Arizona 85007

17 ONE COPY of the foregoing hand-delivered  
18 this 20th day of February, 2007, to:

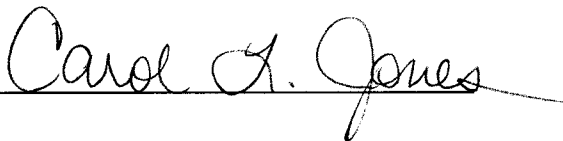
19 Marc Stern, ALJ  
20 Arizona Corporation Commission  
21 1200 West Washington  
22 Phoenix, Arizona 85007

23 ONE COPY of the foregoing mailed  
24 this 20th day of February, 2007, to:

25 Securities Division  
26 Arizona Corporation Commission  
27 Attn: Mike Dailey and Mark Dinell  
28 1300 West Washington, Third Floor  
Phoenix, Arizona 85007

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3030 N. Central Ave., Suite 1401  
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Attorneys for Respondents Hodges and Paille

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A

**Francis, Carrie**

---

**From:** Michael Dailey [MDailey@azcc.gov]  
**Sent:** Tuesday, January 02, 2007 5:22 PM  
**To:** Francis, Carrie  
**Subject:** RE: Agra meeting

Thanks.

---

**From:** Francis, Carrie [mailto:CFRANCIS@quarles.com]  
**Sent:** Tuesday, January 02, 2007 5:05 PM  
**To:** Michael Dailey  
**Subject:** RE: Agra meeting

January 4 at 1 pm

Carrie M. Francis  
Quarles & Brady LLP  
2 N. Central Ave.  
Phoenix, Arizona 85004-2391  
Tel 602-229-5728  
Fax 602-420-5028

---

**From:** Michael Dailey [mailto:MDailey@azcc.gov]  
**Sent:** Tuesday, January 02, 2007 2:20 PM  
**To:** Francis, Carrie  
**Subject:** RE: Agra meeting

What date are you confirming? I am no longer available to meet with you tomorrow on February 3.

Are you confirming for January 4 at 1p.m., or January 8 or January 9 at about 3 pm or January 10 or 11 at any time? Sorry for the confusion, and let me know...

---

**From:** Francis, Carrie [mailto:CFRANCIS@quarles.com]  
**Sent:** Tuesday, January 02, 2007 12:53 PM  
**To:** Michael Dailey  
**Subject:** RE: Agra meeting

I think this is fine, but am confirming.

Carrie M. Francis  
Quarles & Brady LLP  
2 N. Central Ave.  
Phoenix, Arizona 85004-2391  
Tel 602-229-5728  
Fax 602-420-5028

---

**From:** Michael Dailey [mailto:MDailey@azcc.gov]

1/2/2007

**Sent:** Thursday, December 28, 2006 9:26 AM  
**To:** Francis, Carrie  
**Cc:** Pam Riley; Gary Clapper  
**Subject:** RE: Agra meeting

Carrie:

I am going to have to re-schedule our meeting from January 3 to January 4 at 1.p.m. at our offices. Please confirm that you and/or Lonnie are still available on that date. I am out of the office on January 5.

If January 4 does not work, I am available all day on January 8 & 9, and late afternoon (after 2 or 3 p.m.) on January 10 or 11.

---

**From:** Francis, Carrie [mailto:CFRANCIS@quarles.com]  
**Sent:** Friday, December 22, 2006 11:15 AM  
**To:** Michael Dailey  
**Subject:** Agra meeting

Mike

We are available all day on January 3-4, or in the morning on the 5th for a meeting at our offices. Please let me know if any of these dates work for you.

Carrie M. Francis  
Quarles & Brady LLP  
2 N. Central Ave.  
Phoenix, Arizona 85004-2391  
Tel 602-229-5728  
Fax 602-420-5028

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**Francis, Carrie**

---

**From:** Francis, Carrie  
**Sent:** Tuesday, January 02, 2007 2:31 PM  
**To:** 'Michael Dailey'  
**Subject:** RE: Agra meeting

This altered schedule is fine.

Carrie M. Francis  
Quarles & Brady LLP  
2 N. Central Ave.  
Phoenix, Arizona 85004-2391  
Tel 602-229-5728  
Fax 602-420-5028

---

**From:** Michael Dailey [mailto:MDailey@azcc.gov]  
**Sent:** Thursday, December 28, 2006 9:26 AM  
**To:** Francis, Carrie  
**Cc:** Pam Riley; Gary Clapper  
**Subject:** RE: Agra meeting

Carrie:

I am going to have to re-schedule our meeting from January 3 to January 4 at 1.p.m. at our offices. Please confirm that you and/or Lonnie are still available on that date. I am out of the office on January 5.

If January 4 does not work, I am available all day on January 8 & 9, and late afternoon (after 2 or 3 p.m.) on January 10 or 11.

---

**From:** Francis, Carrie [mailto:CFRANCIS@quarles.com]  
**Sent:** Friday, December 22, 2006 11:15 AM  
**To:** Michael Dailey  
**Subject:** Agra meeting

Mike

We are available all day on January 3-4, or in the morning on the 5th for a meeting at our offices. Please let me know if any of these dates work for you.

Carrie M. Francis  
Quarles & Brady LLP  
2 N. Central Ave.  
Phoenix, Arizona 85004-2391  
Tel 602-229-5728  
Fax 602-420-5028

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1/2/2007

**B**

**AFFIDAVIT OF WILLIAM H. BAKER**

STATE OF ARIZONA       )  
                                  ) ss.  
County of Coconino       )

I, William H. Baker, having been duly sworn, hereby state as follows:

1. I am over the age of 18. This Affidavit is based upon my personal knowledge.
2. I am employed by AGRA-Technologies, Inc. ("AGRA") as its Chief Financial Officer.
3. AGRA is an agriculture company located at 5800 N. Dodge Avenue, Flagstaff, Arizona, 86004.
4. On June 14, 2006, I received a subpoena from the Arizona Corporation Commission (the "Commission") at the AGRA corporate offices. A copy of the subpoena is attached as Exhibit 1 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents. Exhibit A to the subpoena seeks 18 categories of various documents for 4 different companies (Agra-Tech, Inc., Peru Partners, Ltd., Mintexx, Inc., and Reliance Land Company). The subpoena had a response date requiring receipt of the documents at the Commission offices in Phoenix, Arizona, by July 7, 2006, at 10 a.m.
5. Upon receipt of the subpoena, I telephoned Gary R. Clapper, Commission Special Investigator, and asked for information about the investigation and specifically explained that the July 7th deadline would be difficult to meet. Mr. Clapper informed me that he could not discuss the basis for the investigation and to provide as much information as possible by the July 7th deadline. No extension for the response time was permitted.

6. In response to this subpoena, I spent approximately 10 hours gathering and copying over 500 documents. The documents were reviewed by me for attorney client or work product privilege communications. I did not intend to disclose privileged communications, nor did I intend to waive attorney client or work product privileges held by me as AGRA's CFO, Bill J. Pierson as AGRA's Chief Executive Officer or by AGRA as a legal entity. Upon information and belief, no privileged documents were inadvertently disclosed with this production.

7. On July 6, 2006, I mailed for overnight delivery the documents gathered in response to the Commission subpoena. A copy of my correspondence transmitting the responsive documents, with a copy cost invoice, is attached as Exhibit 3 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents. In that letter, I stated that AGRA would seek advice from its corporate legal counsel as to whether AGRA needed to provide documents concerning its operations after May 2003, since Peru Partners Ltd., Agra-Tech, Inc., and Mintexx, Inc. were assumed by Galleon Technology and Development Corporation in May 2003. I did not consult with our corporate counsel about the 500 documents I had prepared for production to the Commission.

8. On July 13, 2006, I received a faxed letter from Michael Dailey, Commission Attorney, at the AGRA corporate offices seeking additional documentation pursuant to the June subpoena. The supplement was to be produced at the Commission Phoenix offices on or before July 27, 2006, by 5 p.m. Mr. Dailey's letter sets forth the Commission's authority to subpoena records and threatened that if AGRA did not completely and timely comply that the Commission would initiate contempt proceedings. A copy of Mr. Dailey's correspondence is attached as Exhibit 13 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents.



9. On July 15, 2006, I received at the AGRA corporate offices a subpoena for me to personally appear in Phoenix, on August 8, 2006, and provide testimony as part of the Commission's ongoing investigation. *See Dailey's Correspondence* dated July 13, 2006, attached as Exhibit 13 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents, at ¶ 3.

10. Upon receipt of this testimony subpoena, I again telephoned Mr. Clapper to inquire about the nature of the Commission investigation to better understand what I would be questioned about. Again, Mr. Clapper told me that the investigation was confidential and that he could not answer my questions.

11. Between July 15 and July 24, I spent all of my work time preparing documents to supplement AGRA's document response to the Commission's request, or approximately 41.5 hours. During this time frame I prepared over 4,000 documents for copying and delivery to the Commission. The documents were reviewed by me for attorney client or work product privilege communications. I did not intend to disclose privileged communications, nor did I intend to waive attorney client or work product privileges held by me as AGRA's CFO, Bill J. Pierson as AGRA's Chief Executive Officer or by AGRA as a legal entity.

12. On July 24, 2006, I prepared a detailed log describing the documents to be provided by category of request. A copy of my correspondence transmitting the responsive documents, with a copy cost invoice, is attached as Exhibit 4 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents.

13. I delivered the supplemental documents to the Commission in Phoenix, Arizona on July 25, 2006. While delivering the additional documents, I met with Mr. Dailey, Commission Attorney, and informed him that I would not be available on August 8 to provide

testimony. Mr. Dailey informed me that he no longer needed to take testimony from me as they had all information needed. Upon information and belief, no privileged documents were inadvertently produced with this production.

14. On July 31, 2006, I received a letter at the AGRA corporate offices from Mr. Dailey dated July 27, 2006, confirming that the August 8 examination would be postponed. A copy of Mr. Dailey's correspondence is attached as Exhibit 4 (pg. 8) to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents. Therein Mr. Dailey disputes the copying costs and the amount of time it took for me to gather and copy documents responsive to the Commission's subpoenas as "excessive."

15. On September 13, 2006, Mr. Dailey telephoned me requesting information about AGRA's civil lawsuit against Richard and Sondra Campbell. Specifically, Mr. Dailey sought information about AGRA's September 2005 meeting with Capital Corporation Merchant Funding and sought information about any investment made by Capital Corporation Merchant Funding. When I informed Mr. Dailey that Capital Corporation Merchant Funding had not funded any equity or loans allegedly because of Mr. Campbell's activities, Mr. Dailey responded that he did not need documentation about AGRA's involvement with Capital Corporation Merchant Funding. Mr. Dailey also confirmed that the subpoena for my personal testimony was outstanding.

16. On September 15, 2006, I received correspondence at the AGRA corporate offices from Mr. Dailey seeking additional documents with an October 1, 2006, response deadline. Specifically, Mr. Dailey sought documents concerning Timothy Thomis, Jerry Hodges, Larry Paille, Edwin Ruh, Jr. and documents produced in AGRA's civil lawsuit against Richard and Sondra Campbell. Mr. Dailey's letter again sets forth that AGRA's failure to comply

could result in a finding of contempt. A copy of Mr. Dailey's correspondence is attached as Exhibit 14 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents.

17. On September 18, 2006, I received correspondence at the AGRA corporate offices from Mr. Dailey seeking additional documents concerning AGRA's web site. The communication enclosed a subpoena to AGRA's web host seeking access to AGRA's website. A copy of Mr. Dailey's correspondence is attached as Exhibit 15 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents.

18. On September 22, 2006, I provided Mr. Dailey an access code to the AGRA web site. A copy of my correspondence to Mr. Dailey providing him web access is attached as Exhibit 5 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents. Upon information and belief, no privileged documents/communications were inadvertently disclosed by providing Mr. Dailey access to the AGRA web site.


19. On September 22, I provided responsive documents to the September 15 subpoena concerning stock transfers with an additional 1,500 documents. A copy of my correspondence transmitting the responsive documents is attached as Exhibit 6 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents. The documents were reviewed by me for attorney client or work product privilege communications. I did not intend to disclose privileged communications, nor did I intend to waive attorney client or work product privileges held by me as AGRA's CFO, Bill J. Pierson as AGRA's Chief Executive Officer or by AGRA as a legal entity. Upon information and belief, 58 privileged documents or communications were inadvertently disclosed with this production. See AGRA Privilege Log, coded in green, attached hereto as Exhibit 1.

20. On October 5, 2006, I received correspondence from Mr. Dailey dated October 6, 2006, seeking AGRA's financial information in electronic format or CDs. In addition, Mr. Dailey requested e-mail communications generated by Richard Campbell. A copy of Mr. Dailey's correspondence is attached as Exhibit 17 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents.

21. On October 9, 2006, I provided additional documents concerning AGRA's civil lawsuit against Richard and Sondra Campbell, approximately 850 documents. A copy of my correspondence transmitting the responsive documents is attached as Exhibit 7 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents. These documents were provided to me by our attorneys at Quarles & Brady LLP who act as lead counsel in AGRA's civil case against Richard and Sondra Campbell. When I received the documents from Quarles & Brady LLP, the documents were bates stamped. Because the documents were bates stamped by Quarles & Brady, I believed the documents had been reviewed by legal counsel, that all privilege documents had been removed, and that the remaining documents had already been produced in the civil litigation. Thus when the documents were reviewed by me for attorney client or work product privilege communications, I only randomly spot checked the 850 documents. I did not intend to disclose privileged communications, nor did I intend to waive attorney client or work product privileges held by me as AGRA's CFO, Bill J. Pierson as AGRA's Chief Executive Officer or by AGRA as a legal entity. Upon information and belief, 82 privileged documents or communications were inadvertently disclosed with this production. See AGRA Privilege Log, coded in yellow, attached hereto as Exhibit 1.

22. On October 20 and 23, 2006, I provided Mr. Dailey additional requested spreadsheets detailing AGRA financial information. A copy of my correspondence transmitting the CD of documents is attached as Exhibits 8-9 and 18 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents. The spreadsheet documents were reviewed by me for attorney client or work product privilege communications. I did not intend to disclose privileged communications, nor did I intend to waive attorney client or work product privileges held by me as AGRA's CFO, Bill J. Pierson as AGRA's Chief Executive Officer or by AGRA as a legal entity. Upon information and belief, no privileged documents were inadvertently disclosed with this production.

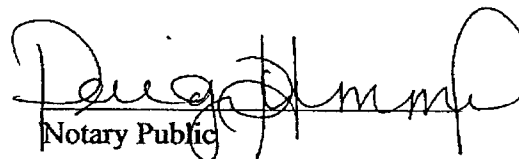
I declare under penalty of perjury that the foregoing is true and correct. Executed this 20<sup>th</sup> day of February, 2007.

  
William H. Baker

SUBSCRIBED AND SWORN to me by William H. Baker this 20<sup>th</sup> day of February, 2007.



My commission expires:

  
Notary Public

10/3/2008

**1**



**PRIVILEGE LOG RELATING TO DOCUMENTS  
PRODUCED TO ACC BY AGRA-TECHNOLOGIES, INC.**

BATES NUMBERS	DATE	TO/CC	FROM	DESCRIPTION	PRIVILEGE ASSERTED
ACC011761	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC011764-11765	6/5/06	Draft for legal counsel review	William Pierson	Draft letter responding to Dick Campbell 5/24/06 e-mail	Attorney-Client Work Product
ACC011766	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	Williams Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC011799	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC011818-11819	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC011821	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC011929-11933	6/5/06	Dean Pickett, Esq. David Wagner, Esq. Douglas Gettler William Baker	William Pierson	E-mail re 6/5/06 demand letter	Attorney-Client Work Product
ACC011934	6/5/06	David Wagner, Esq. Dean Pickett, Esq. Edwin Ruh Douglas Gettler William Baker	William Pierson	Redact e-mail re Richard Campbell statements	Attorney-Client Work Product
ACC011936	6/5/06	David Wagner, Esq. Dean Pickett, Esq. Edwin Ruh Douglas Geller William Baker	William Pierson	Redact e-mail re Richard Campbell statements	Attorney-Client Work Product



ACC012020-12022	9/13/06	Agra Board of Directors	William Pierson William Baker	Redact sections D and E from Board of Directors meeting minutes relating to legal advice	Attorney-Client Work Product
ACC012030-12032	9/15/06	Agra Board of Directors	William Pierson William Baker	Handwritten Board of Director meeting minutes - redact section relating to legal advice	Attorney-Client Work Product
ACC012044-12046	9/13/06	Agra Board of Directors	William Pierson William Baker	Draft Board of Director meeting minutes - redact sections D and E relating to legal advice	Attorney-Client Work Product
ACC012053	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Diagram relating to projects and funding	Attorney-Client Work Product
ACC012078-12081	8/21/06	Lonnie Williams, Esq.	William Baker	E-mail re Campbell complaint	Attorney-Client Work Product
ACC012082-12084	7/3/06	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Memo re timeline	Attorney-Client Work Product
ACC012086-12087	6/28/06		David Wagner, Esq.	Draft response letter	Attorney-Client Work Product
ACC012752-12753	6/7/06	David Wagner, Esq. Dean Pickett, Esq.	William Pierson	E-mail re response letter	Attorney-Client Work Product
ACC012758	6/14/06	Bill Pierson	David Wagner, Esq.	E-mail re response letter	Attorney-Client Work Product
ACC012758	6/15/06	David Wagner, Esq. William Baker Douglas Gettler	William Pierson	E-mail re response letter	Attorney-Client Work Product
ACC012767-12769	6/20/06	David Wagner, Esq. Douglas Gettler William Baker	William Pierson	E-mail re response letter	Attorney-Client Work Product



ACC012772	6/21/06	David Wagner, Esq. Douglas Gettler William Baker	William Pierson	Redact e-mail re Campbell's request to Onyx Group	Attorney-Client Work Product
ACC012774	6/21/06	William Baker David Wagner, Esq.	William Pierson	Redact e-mail re Campbell's request to Onyx Group	Attorney-Client Work Product
ACC012778	6/21/06	William Baker David Wagner, Esq.	William Pierson	Redact E-mail re Campbell's request to Onyx Group	Attorney-Client Work Product
ACC012778	6/26/06	William Baker David Wagner, Esq.	William Pierson	Redact e-mail re Campbell's request to Onyx Group	Attorney-Client Work Product
ACC012780-12782	6/26/06	William Pierson Douglas Gettler David Wagner, Esq.	William Baker	E-mail re Campbell's wage claim	Attorney-Client Work Product
ACC012780	6/27/06	William Baker Douglas Gettler David Wagner, Esq.	William Pierson	E-mail re Campbell's wage claim	Attorney-Client Work Product
ACC012783-12784	6/27/06	William Baker Douglas Gettler David Wagner, Esq.	William Pierson	E-mail re Campbell's wage claim	Attorney-Client Work Product
ACC012783	6/27/06	David Wagner, Esq. William Pierson William Baker	Douglas Gettler	E-mail re Campbell's wage claim	Attorney-Client Work Product
ACC012784-12785	6/26/06	William Pierson Douglas Gettler David Wagner, Esq.	William Baker	E-mail re Campbell's wage claim	Attorney-Client Work Product
ACC012786-12787	6/27/06	William Pierson Dean Pickett, Esq. Douglas Gettler	David Wagner, Esq.	E-mail with attached draft response to Strojnink's demand letter	Attorney-Client Work Product
ACC012789 ACC012790-91	6/27/06	William Pierson William Baker David Wagner, Esq.	Douglas Gettler	E-mail re Campbell's wage claim	Attorney-Client Work Product



ACC012790	6/27/06	David Wagner, Esq. Douglas Gettler Dean Pickett, Esq. William Baker	William Pierson	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012792	6/27/06	William Pierson Douglas Gettler David Wagner, Esq.	William Baker	E-mail re response letter to Campbell's wage claim	Attorney-Client Work Product
ACC012793-12794	6/27/06	William Pierson David Wagner, Esq. William Baker	Douglas Gettler	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012793	6/27/06	David Wagner, Esq. Douglas Gettler Dean Pickett, Esq. William Baker	William Pierson	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012793	6/28/06	William Pierson William Baker David Wagner, Esq.	Douglas Gettler	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC12796-12797	6/27/06	William Pierson William Baker David Wagner, Esq.	Douglas Gettler	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012795-12796	6/27/06	David Wagner, Esq. Douglas Gettler Dean Pickett, Esq. William Baker	William Pierson	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012795	6/28/06	Douglas Gettler David Wagner, Esq. William Baker	William Pierson	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012799-12800	6/27/06	William Pierson William Baker David Wagner, Esq.	Douglas Gettler	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product



ACC012799	6/27/06	David Wagner, Esq. Douglas Gettler Dean Pickett, Esq. William Baker	William Pierson	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012798-12799	6/28/06	William Pierson William Baker David Wagner, Esq.	Douglas Gettler	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012798	6/28/06	Douglas Gettler David Wagner, Esq. William Baker	William Pierson	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012798	6/28/06	William Pierson David Wagner, Esq. William Baker	Douglas Gettler	E-mail re conference call with Attorney Wagner	Attorney-Client Work Product
ACC012801	6/28/06	William Pierson William Baker	Douglas Gettler	E-mail re phone conference with Attorney Pickett	Attorney-Client Work Product
ACC012802	6/29/06	William Pierson David Wagner, Esq. William Baker	Douglas Gettler	E-mail re draft response	Attorney-Client Work Product
ACC012804	6/29/06	Douglas Gettler William Pierson William Baker David Wagner, Esq. Kristin Oddy, Esq.	Dean Pickett, Esq.	E-mail re response letter	Attorney-Client Work Product
ACC012804	6/29/06	Dean Pickett, Esq. Douglas Gettler William Baker David Wagner, Esq. Kristin Oddy, Esq.	William Pierson	E-mail re response letter	Attorney-Client Work Product
ACC012805-12806	7/1/06	William Pierson David Wagner, Esq.	Dean Pickett, Esq.	E-mail re Complaint	Attorney-Client Work Product
ACC012805	7/1/06	David Wagner, Esq. Dean Pickett, Esq.	William Pierson	E-mail re Complaint	Attorney-Client Work Product



ACC012807-12810	7/3/06	David Wagner, Esq. Dean Pickett, Esq. Douglas Gettler William Baker	William Pierson	E-mail re timeline	Attorney-Client Work Product
ACC012811	7/5/06	David Wagner, Esq. William Pierson	William Baker	E-mail re return of property	Attorney-Client
ACC012812	7/6/06	David Wagner, Esq. William Pierson Dean Pickett, Esq.	William Baker	E-mail re return of property	Attorney-Client
ACC012813-12814	7/7/06	William Pierson David Wagner, Esq.	Dean Pickett, Esq.	E-mail re selection of counsel	Attorney-Client
ACC012813	7/7/06	Dean Pickett, Esq. William Baker	William Pierson	E-mail re selection of counsel	Attorney-Client
ACC012816	7/7/06	William Pierson William Baker David Wagner, Esq. Kristin Oddy, Esq.	Dean Pickett, Esq.	E-mail re return of auto	Attorney-Client
ACC012816	7/7/06	Dean Pickett, Esq. William Baker	William Pierson	E-mail re return of auto	Attorney-Client
ACC012821	7/11/06	David Wagner, Esq. William Baker Douglas Gettler	William Pierson	E-mail re offer to Denny Cashatt	Attorney-Client Work Product
ACC013646	7/7/06	William Pierson William Baker David Wagner, Esq. Kristin Oddy, Esq.	Dean Pickett, Esq.	E-mail re return of auto	Attorney-Client
ACC013655-13656	6/9/06	Alex Walker, Esq. (Nataco) William Pierson David Wagner, Esq.	Dean Pickett, Esq.	E-mail re shareholder meeting	Attorney-Client Work Product
ACC012840-12842	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Index re defense strategy	Attorney-Client Work Product



ACC012843-12844	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ATI012845	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes and those from Paralegal Smith	Attorney-Client Work Product
ATI012846-12848	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC012851-12852	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC012855-12856	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC012863-12864	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ATI012865	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ATI012867	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes re strategy	Attorney-Client Work Product
ATI012872	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ATI012873-12875	7/3/06	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Memo re timeline	Attorney-Client Work Product
ATI012878-12879	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ATI012901	9/26/05		William Pierson	Redact handwritten strategy notes and Paralegal Smith's handwritten note	Attorney-Client Work Product



ATI012911-12912	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ATI012913	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note re strategy	Attorney-Client
ACC012916-12917	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes re strategy	Attorney-Client
ACC012918	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes and those from Paralegal Smith	Attorney-Client Work Product
ACC012919-12920	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes re 5/24/06 letter	Attorney-Client
ACC012921-12923	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes and those from Paralegal Smith	Attorney-Client Work Product
ACC012924	Undated	Sandra Smith, Paralegal	Sandra Smith, Paralegal	Redact handwritten note	Attorney-Client Work Product
ACC012925-12926	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC012930-12931	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC012935	7/14/06	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC012937-12938	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC012952-12953	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC012956	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Index re defense strategy memo	Attorney-Client Work Product



ACC012958-12960	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes correlating with defense strategy memo	Attorney-Client Work Product
ACC012971	Undated		William Pierson	Tab sheet corresponding to defense strategy memo	Work Product
ACC012972	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC012984	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013012	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes correlating with defense strategy memo	Attorney-Client Work Product
ACC013024	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013050	Undated		William Pierson	Tab sheet corresponding to defense strategy memo	Work Product
ACC013051	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013084	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013119-13121	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes re strategy	Attorney-Client
ACC013122	Undated		William Pierson	Tab sheet corresponding to defense strategy memo	Attorney-Client



ACC013123	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013125-13126	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes re strategy	Attorney-Client
ACC013186	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013187	Undated			Tab sheet corresponding to defense strategy memo	Work Product
ACC013188	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013291	Undated		William Pierson	Tab sheet corresponding to defense strategy memo	Work Product
ACC013292	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013293-13295	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Index re defense strategy memo	Attorney-Client Work Product
ACC013296-13298	7/3/06	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Memo re timeline	Attorney-Client Work Product
ACC013299-13300	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC013307-13308	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC013309-13310	6/5/06	Draft letter for legal counsel review	William Pierson	Draft letter - not sent per advice from counsel	Attorney-Client Work Product



ACC013311-13312	Undated		William Pierson	Tab sheets corresponding with defense strategy memo	Work Product
ACC013313-13314	Undated		Sandra Smith, Paralegal	Redact handwritten notes	Attorney-Client
ACC013316-13317	Undated			Tab sheets corresponding with defense strategy memo	Work Product
ACC013318-13319	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC013324-13325	Undated		William Pierson	Tab sheets corresponding with defense strategy memo	Work Product
ACC013326	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC013328	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes and those from Paralegal Smith	Attorney-Client Work Product
ACC013347-13348	6/17/06	Draft letter for legal counsel review	William Pierson	Draft response letter - not sent upon advice from counsel	Attorney-Client
ACC013345-13346	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC013349-13350	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC013355	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC013357-13358	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product



ACC013359	Undated	Lonnie Williams, Esq. Carrie Francis, Esq	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013361-13362	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC013363	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes and those by Paralegal Smith	Attorney-Client Work Product
ACC013364-13365	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC013368-13370	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes re ore sales	Attorney-Client
ACC013372	Undated		William Pierson	Tab sheets corresponding to defense strategy memo	Work Product
ACC013373	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Index re defense strategy memo	Attorney-Client Work Product
ACC013374	Undated		William Pierson	Tab sheet corresponding to defense strategy memo	Work Product
ACC013375	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013553	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013558	Undated		Sandra Smith, Paralegal	Redact handwritten note	Attorney-Client
ACC013560			William Pierson	Tab sheet corresponding with defense strategy memo	Work Product



ACC013563	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013576	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten note correlating with defense strategy memo	Attorney-Client Work Product
ACC013621-13622	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Handwritten notes correlating with defense strategy memo	Attorney-Client Work Product
ACC013623-13637	Undated	Lonnie Williams, Esq. Carrie Francis, Esq.	William Pierson	Redact handwritten strategy notes	Attorney-Client Work Product
ACC013679	Undated		Sandra Smith, Paralegal	Redact handwritten note	Attorney-Client
ACC013681	6/26/06	William Pierson David Wagner, Esq.	William Baker	Redact e-mail re balance sheet and notes from Paralegal Smith	Attorney-Client Work Product
ACC013720	8/2/06		Sandra Smith, Paralegal	E-mail re documents	Attorney-Client Work Product



C

**AFFIDAVIT OF WILLIAM J. PIERSON**

STATE OF ARIZONA            )  
                                      ) ss.  
County of Coconino         )

I, William J. Pierson, having been duly sworn, hereby state as follows:

1. I am over the age of 18. This Affidavit is based upon my personal knowledge.
2. I am employed by AGRA-Technologies, Inc. ("AGRA") as its Chief Executive Officer.
3. AGRA is an agriculture company located at 5800 N. Dodge Avenue, Flagstaff, Arizona, 86004.
4. On September 25, 2006, I received at my residence a subpoena dated September 20, 2006, from the Arizona Corporation Commission (the "Commission") for my personal records. A copy of the subpoena is attached as Exhibit 11 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents. Exhibit A to the subpoena seeks 16 categories of various documents. The subpoena had a response date requiring receipt of the documents at the Commission offices in Phoenix, Arizona, by October 10, 2006, at 10 a.m.
5. In response to this subpoena, my wife and I spent approximately 20 hours gathering and copying over 1,000 documents. The documents were reviewed by me for attorney client or work product privilege communications. I did not intend to disclose privileged communications, nor did I intend to waive attorney client or work product privileges held by me as AGRA's Chief Executive Officer, William H. Baker as AGRA's CFO, or by AGRA as a legal entity.

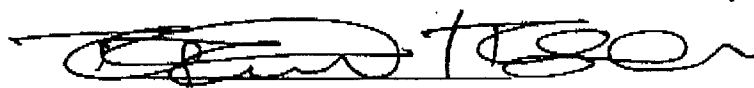
6. On October 9, 2006, I prepared a detailed log describing the documents to be provided by category of request. A copy of my correspondence transmitting the responsive documents is attached as Exhibit 12 to the Commission's Motion for Ruling on Allegedly Inadvertently Produced Privileged Documents.

7. Upon information and belief, 5 privileged documents were inadvertently disclosed with this production. See AGRA Privilege Log, coded in blue, attached hereto as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct. Executed this  
20 day of February, 2007.

  
William J. Pierson

SUBSCRIBED AND SWORN to me by William J. Pierson this 20<sup>th</sup> day of  
February 2007.

  
Notary Public

My commission expires:



July 5<sup>th</sup>, 2010.

**1**



**SUPPLEMENTAL PRIVILEGE LOG RELATING TO DOCUMENTS  
PRODUCED TO ACC BY AGRA-TECHNOLOGIES, INC.**

BATES NUMBERS	DATE	TO/CC	FROM	DESCRIPTION	PRIVILEGE ASSERTED
ACC013836-13837 ACC013839-13840	7/28/06	William Pierson David Wagner, Esq.	Scott Zerlaut, Esq.	E-mail re Kalahari Mineral Holdings litigation	Attorney-Client Work Product
ACC013835	7/28/06	Scott Zerlaut, Esq. David Wagner, Esq.	William Pierson	E-mail re Kalahari Mineral Holdings litigation	Attorney-Client
ACC013835	7/28/06	William Pierson	Scott Zerlaut, Esq.	E-mail re Kalahari Mineral Holdings litigation	Attorney-Client
ACC013838	5/11/06	William Pierson David Wagner, Esq.	Scott Zerlaut, Esq.	E-mail re Kalahari Mineral Holdings litigation	Attorney-Client
ACC013838	5/11/06	Scott Zerlaut, Esq.	William Pierson	E-mail re Kalahari Mineral Holdings litigation	Attorney-Client